



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 25, 2004

N K Sowards
3212 W 300 N
Moore, ID 83255

Re: Mitigation Request for Water Rights 34-621B, 34-666, and 34-10872

Dear Mr. Sowards,

On June 1, 2004, the Water District 34 advisory committee voted to support a plan for providing mitigation to senior priority water rights whose source is the Big Lost River and whose owners had requested mitigation pursuant to the Water District 34 Water Distribution Rules (IDAPA 37.03.12.050). You had submitted a mitigation request for the above referenced water rights pursuant to these rules. The advisory committee minutes that IDWR received for the June 1st meeting are not specific as to which water rights the committee voted to provide mitigation, but a summary of the meeting submitted to IDWR on June 2, 2004 by the water district watermaster clearly indicates that the committee discussion and vote was limited to the 1883 priority water rights owned by Jack A Jensen, L Vaughn Jensen, and Jay V Jensen ("Jensen"). A second advisory committee meeting was held on June 3, 2004 that confirmed the committee's vote of June 1st. IDWR did not receive minutes of this latter meeting but it is our understanding that the discussion and vote was again limited to the 1883 priority rights owned by Jensen. Your rights were not considered for direct mitigation because the priority date of your rights are relatively junior, and because little or no water would have been delivered to these more junior priority rights given present drought conditions and absent ground water development. IDWR reviewed some historical water district delivery records from drought years similar to 2004 and prior to significant ground water development, and estimated that your 1887 priority right would have been delivered a maximum of nine days. This estimate may be liberal given that 2004 is the fifth consecutive year of drought in the Big Lost River area.

On June 23, 2004, the Idaho Department of Water Resources ("IDWR") received a written request from the Watermaster of Water District 34 to schedule a special meeting of the water district pursuant to Section 42-605(11), Idaho Code. The watermaster stated that the purpose of the meeting is to "address the concerns of the water users in opposition of the mitigation request for water rights 34-372A, 34-372B, and 34-690B, owned by Jack A Jensen, L Vaughn Jensen, and Jay V Jensen." The watermaster's letter advised that a meeting was held by water users on June 22, 2004, and that a majority of the users present at that meeting voted to rescind the water district advisory committee decision of June 1, 2004 to provide mitigation for the above referenced water rights. The letter further advised that a majority of the users present voted to support a request that the watermaster call for a special water district meeting.

The purpose of this letter is to formally advise you that IDWR has received the request from the watermaster calling for a special water district meeting to vote on mitigation. We also wish to advise you that as of this date, IDWR has not received any mitigation plan from the watermaster on behalf of

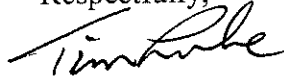
the water district. Given the request for the special meeting, IDWR does not anticipate that the water district will submit a mitigation plan, which is an option available under the Water District 34 Water Distribution Rules.

IDWR will provide notice of a special meeting in accordance with Section 42-605(11), Idaho Code. The meeting cannot be held until 30 days after the notice is sent. IDWR is waiting on information from the water district regarding the time and location of the meeting.

The Water District 34 Water Distribution Rules allow several options of mitigation for holders of junior ground water rights when a mitigation request is made, but the rules do not require that junior ground water rights be curtailed if the water district or junior priority ground water users do not provide mitigation. Regulatory relief however may be provided pursuant to the statewide Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11). Specifically, a senior surface water right holder can file a delivery call against holders of junior priority ground water rights in accordance with Rule 40 of the Conjunctive Management Rules (IDAPA 37.03.11.40).

Please contact me directly at (208) 327-7864 if you have questions concerning this matter.

Respectfully,



Tim Luke

Manager, Water Distribution Section

Cc: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region
Seth Beal, Chairman, Water District 34 Advisory Committee